

DANIEL HOROWITZ (SBN: 92400)
LAW OFFICE OF DANIEL HOROWITZ
3650 Mt. Diablo Blvd., Ste. 225
Lafayette, CA 94549
Telephone: (925) 283-1863
horowitz@physiciandefense.lawyer

CHARLES BOND (SBN: 60611)
PHYSICIANS' ADVOCATES
2033 N. Main St., Ste. 340
Walnut Creek, Ca 94596
Telephone: (510) 841-7500
cb@physiciansadvocates.com

Attorneys for Plaintiff
STEPHEN NOBLE, M.D.

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION

STEPHEN NOBLE, M.D.,

Plaintiff,

vs.

SUTTER HEALTH, GOULD MEDICAL
GROUP, INC., SUTTER GOULD
MEDICAL FOUNDATION, SUTTER
VALLEY MEDICAL FOUNDATION, INC
SUTTER MEMORIAL MEDICAL
CENTER, LIT K. FUNG, M.D., JUDY
FUNG, JOHN TALIEH, M.D., AND DOES
1-100

Defendants

Case No.:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED
(RULE 201 - FED. R. CIV. P. 38)**

COMES NOW Plaintiff, STEPHEN NOBLE, M.D. and by and through his attorneys
as to Defendants GOULD MEDICAL GROUP, INC., SUTTER GOULD MEDICAL
FOUNDATION, SUTTER VALLEY MEDICAL FOUNDATION, INC., SUTTER

1 HEALTH, SUTTER MEMORIAL MEDICAL CENTER, LIT K. FUNG, M.D., JUDY
2 FUNG, JOHN TALIEH, M.D., AND DOES 1-100, and hereby files this Complaint and
3 alleges as follows:

4
5 **I. SYNOPSIS**

6 1. Sutter Health, Sutter Gould Medical Group along with the other Defendants
7 are guilty of using unfair and racially discriminatory practices against Black and other
8 minority doctors. For their own economic gain and control of power, Defendants use false
9 allegations and intimidation tactics to target their own doctors – especially Black and other
10 minority doctors to “keep them in line” and to suppress them financially and
11 psychologically.

12
13 2. Stephen Noble, M.D., who is Black, was the victim of Defendants’ racially
14 motivated attacks, even though he is one of the country’s most highly trained surgeons. He
15 now brings this complaint for damages – including punitive damages and injunctive relief –
16 to expose and halt Defendants’ unlawful systemic racism and to restore the respect due him
17 as well as other Black and minority physicians who have similarly been the victims of
18 Defendants’ racist practices.

19
20 3. In recruiting Dr. Noble to be a Sutter doctor, Defendants flatly lied to him
21 and made false promises about the job they were offering to him; then, based on his race,
22 they gave him an employment contract that broke their promises and paid him far below
23 other physicians in his specialty who were not Black.

24
25 4. In reliance on Defendants’ promises, Dr. Noble moved his family across the
26 country and started to work on September 4, 2018, but Defendants took systematic,
27 malicious, and calculated steps to assure his failure. Defendants actively prevented him from
28

1 building a practice and earning what other doctors in his specialty earned. For example, they
2 refused to put him on the ER call schedule, they canceled or reassigned surgeries on Dr.
3 Noble's patients without Dr. Noble's knowledge, etc.

4
5 5. Ultimately, Defendants fabricated sham allegations about Dr. Noble's patient
6 care, even though Dr. Noble's surgical outcomes were better than the other surgeons
7 employed by Sutter Gould in his specialty.

8
9 6. In the meantime, pretextually, Defendants used their sham allegations and his
10 low productivity (which they caused) as the basis for slashing Dr. Noble's salary by sixty
11 percent (60%), making **Dr. Noble the lowest paid full-time cardiothoracic surgeon in the**
12 **entire United States.** This obscene pay cut was racially motivated. Obviously, he was
13 earning far less than Sutter Gould's other cardiothoracic surgeons who were not Black.

14
15 7. Dr. Noble could not just resign and move on. As long as Defendants' sham
16 allegations were pending against him, he was considered to be "under investigation". If he
17 went ahead and resigned while "under investigation", Sutter and Sutter Gould would have to
18 report him to the California Medical Board (placing his medical license in jeopardy), and to
19 the National Practitioners' Data Bank (NPDB), which is a federal data base that identifies
20 doctors who have a history of malpractice or medical discipline. **A Data Bank report is**
21 **ruinous to a doctor's career** because the Data Bank **must** be consulted by all future
22 employers, hospitals, health plans, and other organizations that are key to the doctor's
23 livelihood. A report to the NPDB places a serious stigma and permanent stain on a doctor's
24 professional career and makes it very difficult for the doctor to find new employment or to
25 carry on professionally; thus, it carries huge financial consequences for the doctor.
26

27 8. Using classic bullying tactics, Defendants repeatedly threatened to report Dr.
28

1 Noble to the Medical Board and Data Bank. With their constant threats of reporting hanging
2 over Dr. Noble's head, he was forced to work in Defendant's hostile and racist environment
3 against his will. To keep Dr. Noble from taking another job and to further damage his
4 reputation, Defendants deliberately dragged out their baseless "investigation" for nine
5 months.
6

7 9. Defendants have used these bullying tactics against other Black and minority
8 physicians throughout the Sutter system as a means of intimidation as a way to force the
9 physicians to remain employed by Sutter's medical groups, and as a way to drastically cut
10 the doctors' pay. Defendants kept threatening Dr. Noble with a form of disciplinary action
11 known as a Performance Improvement Plan ("PIP"). Defendants refused to clearly state their
12 basis for the PIP. Dr. Noble refused to agree to the PIP. In spite of this refusal, however,
13 Defendants falsely asserted that Dr. Noble was under a PIP. Like an "investigation," doctors
14 cannot resign while they are under a performance improvement plan without being reported.
15 So, Dr. Noble repeatedly asked Defendants to clarify his PIP status, but Defendants refused
16 to answer, leaving him in limbo and unable to get out of the racist and hostile work
17 environment.
18

19
20 10. Defendants then conspired to initiate a peer review investigation against Dr.
21 Noble based on bogus charges. Again, Dr. Noble could not leave without being reported.
22

23 11. Ultimately, Dr. Noble had to disprove Defendants' sham allegations - **not**
24 **once, but twice**. The effort, the cost, and the toll on his reputation caused him serious
25 physical and emotional distress. He first disproved the charges to the satisfaction of his
26 Department. However, Defendants apparently were not satisfied, so they referred the
27 'investigation' to an "outside reviewer." It turned out, however, that the reviewer himself
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1 had been severely disciplined and unceremoniously removed as Chair of his Department at
2 Baylor for his excessively high complication rate of 15%. In support of his case, Dr. Noble
3 offered opinions from one of the country's leading experts in cardiothoracic surgery. Dr.
4 Noble's expert was able to show that Dr. Noble's care was perfectly within acceptable
5 standards. Sheepishly, the Medical Executive Committee (the body that governs the medical
6 staff) voted not to impose discipline on Dr. Noble.

8 12. Dr. Noble endured over two and a half years of racially motivated
9 mistreatment and humiliation by Defendants. So, as soon as he was no longer "under
10 investigation" Dr. Noble submitted his resignation from Sutter Gould Medical Group and
11 from the Medical Staff of Sutter Memorial Hospital. Defendants literally drove him out of
12 town by constructively discharging him based on their discriminatory and tortious acts.

14 13. Subsequent events bore out Dr. Noble's belief that Defendants actions were
15 race-based. While Dr. Noble was struggling so hard to build a patient base, Sutter and
16 Sutter Gould were plotting to recruit and hire his replacement. Dr. Noble's last day was the
17 new recruit's first day at work. The replacement doctor was ethnically Chinese. It was
18 reported that Dr. Fung, head of Cardiothoracic Surgery, stated to a colleague that he was
19 glad to finally have "someone who looked like him" working with them. Sutter Gould also
20 subsequently hired another cardiothoracic surgeon who is Caucasian.

22 **II. AN INTRODUCTION TO PLAINTIFF, STEPHEN NOBLE, M.D.,**
23 **PHYSICIAN AND DECORATED WAR HERO**

24 14. Plaintiff, **Stephen Noble, M.D.** is a board-certified cardiothoracic surgeon,
25 with advanced fellowship training in heart surgery. Dr. Noble participated in a Master's
26 program in Medical Sciences in 2001 at the Indiana School of Medicine. He later graduated
27 from the same University with a medical degree in 2006. From 2006-2011, Dr. Noble was a
28

1 General Surgery Resident at Oregon Health and Science University.

2 15. From 2011-2013 he served as a General Surgeon at the Naval Hospital
3 Twentynine Palms. He then obtained further surgical expertise at Ohio State University
4 completing a Cardiothoracic Fellowship (2013-2015). Dr. Noble served as chief resident at
5 Ohio State and received the Housestaff Citizenship Award. He then became an Assistant
6 Professor, United States Navy, Naval Medical Center Portsmouth in Cardiothoracic
7 Surgery (2015-2018). Dr. Noble's distinguished curriculum vitae is attached as Exhibit A.
8 All told, Dr. Noble has had twelve years of medical training including two years of highly
9 specialized training in heart and cardiothoracic surgery. He has authored scientific papers
10 and lectured in his field. His training and professional achievements make Defendants'
11 treatment of him all that much more disrespectful and abasing.
12

13
14 16 **Dr. Noble is a decorated war hero** who proudly served our country in the
15 armed forces for seven years as a general surgeon and cardiothoracic surgeon. He was
16 deployed to Afghanistan in 2016 as part of Operation Resolute Support where he treated
17 over 81 severely injured soldiers with a 99% survival rate. Even when his camp came
18 under attack, he kept on triaging and treating the wounded. For his brave service in this
19 very dangerous combat zone, he received two Navy and Marine Corps Commendation
20 Medals, the National Defense Service Medal, the Afghanistan Campaign, the Global War
21 on Terrorism Medal, the NATO ISAF (International Security Assistance Force) Medal,
22 and the Navy Sea Service Deployment Award; he also received commendations for: Navy
23 Expert Rifle Qualification, Navy Expert Pistol Qualification, and Combat Casualty Care
24 Course Sierra Platoon Leader.
25
26

27 **III. THE DEFENDANTS AND OTHER RELATED ENTITIES**
28

1 17. Sutter Health intentionally obfuscates its relationships among the various
2 Sutter enterprises by frequently changing corporate names and corporate structure. This
3 corporate shell game is intended to confuse consumers, the courts and even its employed
4 physicians. All the entities in the health system, however, still start with the word “Sutter.”
5 Sutter Health consists of at least 24 acute care hospital facilities, 31 ambulatory surgery
6 centers, nine cancer centers, six specialty care centers, nine major physician organizations,
7 8,200 physicians and 48,000 employees located in 19 counties in Northern California. All
8 report to a single CEO. The description of the duties of Sutter Health’s CEO on its website
9 clearly show both the united hierarchy, and unity of interest of all the Sutter entities: “As
10 president and CEO of Sutter Health, Sarah Krevans leads the network’s 24 hospitals,
11 53,000 employees, 14,000 clinicians, outpatient services, research facilities, home health
12 and hospice care services, and business professionals.”¹

13 18. Thus, the corporate Defendants are all clearly affiliated corporations and
14 agents of each other (See Corp. C. §150), as well as co-conspirators.

15 19. **Sutter Health** is a 501(c)(3) corporation which was established to provide
16 assistance to other corporations which included “Sutter Gould Medical Foundation” (See
17 Exhibit I (May 11, 2012 Amended and Restated Articles of Incorporation.)) These articles
18 were amended on December 20, 2018 (Exhibit J) and eliminated Sutter Gould Medical
19 Foundation and substituted Sutter Valley Medical Foundation in its place. Therefore, at all
20 times relevant herein, Sutter Valley Medical Foundation and Sutter Health existed to assist
21 each other’s business goals and are operationally and financially interrelated.

22 20. **The Sutter Gould Medical Group, Inc.** (“Sutter Gould”) is a California
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28 ¹ <https://www.sutterhealth.org/about/leadership>

1 professional corporation which employed Dr. Noble. (The Memorandum of Understanding
2 is attached hereto as Exhibit B and the Employment Contract is attached as Exhibit C.)
3 “Gould Medical Group of the Sutter Gould Medical Foundation” is how the entity self
4 identifies itself in the Memorandum of Understanding with Dr. Noble. (Exhibit B dated
5 January 8, 2018). However, a copy of the 2nd Restated Articles of Incorporation that were in
6 effect at all times relevant herein, is attached as Exhibit D. The Statement of Information
7 filed February 19, 2019 and the Statement of Information filed September 3, 2019 are
8 attached as Exhibits E and F respectively. No other Statement Information has ever been
9 filed. The entity has been a registered California corporation since 11/12/1971. These
10 documents identify the entity as “The Sutter Gould Medical Foundation.” This complaint
11 uses the name registered with the State of California and abbreviates it to “Sutter/Gould”.
12

13
14 21. **The Sutter Gould Medical Foundation** (which Gould in its Memorandum
15 of Understanding claimed to be part of or related to as set forth in paragraph 2 above), did
16 not exist in 2018 or at any time relevant to this action. Said group was “merged out” on
17 March 1, 2016 and was absorbed into the “Sutter Valley Medical Foundation” (Exhibit G).
18 Hence any references to “Sutter Gould Medical Foundation” are intended to reference
19 “Sutter Valley Medical Foundation” (and vice versa) as a single, integrated entity. The
20 abbreviation “SVMF” will be used in this complaint to represent this merged entity.
21

22
23 22. **Sutter Valley Medical Foundation, Inc.** (SVMF) is a California
24 Corporation which by its Amended and Restated Articles of Incorporation (11/1/2015), filed
25 herein as Exhibit H have been formed (in part), to establish clinics and medical facilities and
26 “[t]o contribute to the growth, development and financial strength of Sutter Health...”. The
27 corporation is a 501(c)(3) corporation under the Internal Revenue Code of 1986.
28

1 23. **Sutter Memorial Medical Center** (“MMC”) is a not-for-profit hospital,
2 part of the Sutter Health network. It is located at 1700 Coffee Road Modesto,
3 California. It is also called SutterHealth Memorial Medical Center. (herein “Sutter
4 Memorial”.)

5
6 24. **Doctors Medical Center of Modesto, Inc.** (“DMC”) is a hospital
7 located in Modesto which is a subsidiary of Tenet Healthcare Corporation.

8 25. **Lit K. Fung, M.D.** is a thoracic surgeon employed by Sutter Gould who
9 both supervised and interacted with Dr. Noble. Dr. Lit K. Fung, M.D., was at all times
10 relevant herein, a senior partner at Sutter Gould. In all matters alleged herein which relate
11 to Dr. Fung, Plaintiff alleges that Dr. Fung acted in the course and scope of his
12 employment with Sutter Gould and that his conduct, including his racially discriminatory
13 and other wrongful conduct, was known to Sutter Gould and ratified by Sutter Gould. Dr.
14 Lit K. Fung, M.D., further acted in concert with, aiding and abetting and in conspiracy with
15 other persons to accomplish the unlawful conduct perpetrated against Dr. Noble.
16

17
18 26. **Judy Fung** is the wife of Lit K. Fung, M.D. She is not an employee of
19 Sutter Health or Sutter Gould, yet she scheduled the cardiothoracic surgeries for Sutter
20 Gould patients. Hence, whenever when Dr. Noble wanted to schedule a surgery at Sutter
21 Memorial or elsewhere, he had to go through Judy Fung. She would reassign and cancel
22 Dr. Noble’s scheduled surgeries arbitrarily. She also controlled communications with Dr.
23 Fung. So, if Dr. Noble wanted to reach his colleague and senior partner he had to go
24 through Judy Fung. Defendants knew of Judy Fung’s unusual role, her offensive behaviors
25 and ratified her decisions and behaviors in spite of complaints from Dr. Noble and
26 regardless of the dangers her intermeddling posed for patient safety. Her access to Patient
27
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1 Health Information was a violation of HIPPA.

2 27. **Dr. John Talieh** is a thoracic surgeon in Modesto, California now
3 affiliated with Sutter Gould. Plaintiff alleges that Dr. Talieh acted in the course and scope
4 of his employment with Sutter Gould and that his conduct, including his racially
5 discriminatory and other wrongful conduct, was known to Sutter and Sutter Gould who
6 ratified that conduct. John Talieh further acted in concert with, aiding and abetting and in
7 conspiracy with other persons to accomplish the unlawful conduct perpetrated against Dr.
8 Noble.
9

10 28. **Does 1-100** are individuals and business entities, whose name,
11 capacity and/or liability is not sufficiently known to include them by name. When
12 their true names and capacities are known, this complaint will be amended to reflect
13 the same.
14

15 29. Defendants and the individuals acting in concert with them acted with
16 knowledge of the wrongful conduct of each other. The wrongful conduct of individuals
17 was known to Sutter and Sutter Gould and ratified by each. All conduct alleged herein by
18 individuals was done within the course, conduct and scope of their relationship to Sutter
19 Health and Sutter Gould. The individuals Sutter Health and Sutter Gould acted as civil
20 conspirators with the specific intent to further the wrongs set forth herein. The
21 individuals and Gould acted deliberately to aid and abet the wrongdoing as set forth
22 herein.
23
24

25 **IV. JURISDICTION**

26 **28 U.S.C. § 1331 (Federal Question) / 28 U.S.C. § 1367 (Supplemental)**

27 30. Claims are hereby brought under 42 U.S.C. 1981, a law of the United
28

1 States. This Court has supplemental jurisdiction pursuant to 42 U.S.C. 1367 over all other
2 claims as they arise from the same facts and circumstances that are contained in the claims
3 under 42 U.S.C. 1981 and Title VII.
4

5 **28 U.S. Code § 1332**

6 31. Plaintiff is a resident of Oregon State. Defendants Sutter, Sutter Gould,
7 SVMF, and Sutter Memorial Medical Center of Modesto are California corporations;
8 Defendants Lit K. Fung, Judy Fung, and John Talieh are California residents. The claims
9 by individual count and in the aggregate exceed \$75,000.00
10

11 **V. VENUE**

12 32. Defendant Sutter Health is a corporation with its headquarters in Sacramento,
13 California. Therefore venue is proper under 28 U.S.C. § 1391(b)(1). All corporate
14 entities are substantially tied to, owned by or controlled by Sutter Health (as defined in
15 paragraph 19 of this complaint). As set forth in paragraph 17 of this complaint, Sutter
16 utilizes various entities, names and subgroups with Sutter being the controlling entity for
17 all.
18

19 **VI. ESSENTIAL BACKGROUND: DOCTORS ARE SUBJECT TO**
20 **INSTITUTIONAL BLACKBALLING VIA THE CREDENTIALING**
21 **PROCESS**

22 33. The average physician fills out approximately 12 professional applications
23 per year. These applications are vital to maintain the doctor's reputation and livelihood. The
24 applications include state medical board licensure, employment, membership in hospital
25 medical staffs (giving the rights to the doctors to practice and perform surgery at the
26 hospital), membership in medical and specialty societies (including Board Certification),
27 malpractice insurance, and inclusion in health plans and health insurers provided panels
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1 (which is economically vital to physicians).

2 34. These applications are vetted in a process known as “credentialing”.
3
4 Credentialling entails checking the doctor’s educational and employment background, as
5 well as the doctor’s disciplinary history at all hospitals where the doctor has had medical
6 staff privileges. Another essential part of credentialling is checking with the state medical
7 licensing board wherever the doctor has held a license to see if there has been any
8 disciplinary action taken against the doctor. Of paramount importance in credentialling is the
9 National Practitioners’ Data Bank, a governmentally maintained data base of all physicians
10 who have settled malpractice suits or have been the subject of disciplinary action by a state
11 licensing board or any hospital. Under Federal law this Data Bank **must** be checked before a
12 state licensing board issues or renews a physician’s license. Likewise, before granting a
13 physician privileges to operate at any hospital, the hospital **must** check the Data Bank, as
14 must medical groups, specialty societies, and board certifying organizations. Most
15 importantly, health insurers and health plans check the Data Bank before putting doctors on
16 their provider panels. Some insurers exclude doctors automatically if they have been reported
17 to the Data Bank.
18

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20 35. If the official website of the licensing boards or the NPDB have wrong,
21 misleading, or unfair information, they can ruin a doctor’s reputation and make it very
22 difficult for the doctor to get a job or be credentialed by hospitals and health plans, etc.
23
24 Reporting, therefore, has a direct impact on the compensation a doctor can earn.

25 36. Sutter and Sutter Gould routinely used the threat of reporting a doctor to the
26 California Medical Board and/or the Data Bank to intimidate doctors and “keep them in
27 line.” Management regularly collects negative secret reports about doctors, which they
28

1 reveal only when they want to threaten the doctor with reportable discipline. Sutter and
2 Sutter Gould also fabricate allegations against doctors for the purpose of intimidating them.
3 In many instances the allegations against Black doctors are race-based and arise out of
4 Defendants' culture of systemic racism.
5

6 37. Virtually all credentialing applications, filed out by doctors, have so-called
7 "attestation questions" that require the doctors to self-disclose any negative information
8 about themselves. These attestations, very frequently, ask whether the doctor has ever been
9 investigated by an employer, hospital, or state licensing board. The doctor must answer the
10 question truthfully -even if the investigation concluded that the doctor did nothing wrong.
11 Thus, a mere accusation – whether or not it is true – can trigger an investigation which stains
12 the doctor's reputation for life.
13

14 38. Thus, credentialing is an impenetrable web. Each institution that is checked
15 can share its files with the credentialing institution. The doctor never sees what is shared, but
16 to be credentialed the doctor must agree to this file sharing. These unfounded allegations and
17 unproven charges travel from institution to institution, tainting doctor's reputations without
18 them even knowing it. For physicians, truly, the power to accuse is the power to destroy.
19

20 39. The use of false or unsubstantiated allegations against a doctor by hospitals
21 or medical groups is called sham peer review. Normally, an accused physician is entitled to
22 a hearing to prove whether the allegations are true or false, but Sutter and other Defendants
23 evade those rights by summarily suspending the doctor and giving the doctor a hearing only
24 after the discipline has been imposed. Summary suspensions are only supposed to be used
25 when there is a threat of "imminent" patient harm. Sutter and Sutter Gould threaten to
26 impose summary suspensions even when there is no imminent threat to patient care. If the
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1 suspension lasts long enough it must be reported to the California Medical Board and Data
2 Bank. Dr. Noble was threatened with a baseless summary suspension.

3 40. Sutter and Sutter Gould have taken sham peer review one step further by
4 using a form of discipline (or threatened discipline) known as a Performance Improvement
5 Plan or PIP. A PIP can be imposed on a doctor without specific allegations and without
6 giving the doctor any opportunity to disprove the PIP. Sutter and Sutter Gould impose
7 Draconian and often senseless PIPs on the doctor and threaten suspension or termination if
8 the doctor does not comply. Defendants' PIPs disproportionately target Black and minority
9 doctors. First, the doctors are usually drawn aside by management and told they are "in
10 trouble" without any further detail. They are told they should voluntarily submit to a written
11 PIP, and told they have to agree and sign it. Doctors do not know that PIPs are a form of
12 discipline. In cajoling doctors to volunteer for this discipline, Sutter and Sutter Gould use
13 phrases like "it's good for you" and "everybody goes through it." Both phrases are false.
14 They couple these lies with the representation that the PIP will not be reported to the
15 Medical Board or Data Bank, but that is a deceptive half-truth: While the PIP itself is not
16 reportable, it becomes reportable if the doctor resigns while still under the PIP. So, as with
17 an "investigation," the doctor is trapped.

18 41. The terms of PIPs imposed by Sutter and Sutter Gould are often open-ended,
19 vague, debasing and humiliating. They require the doctor to "report" to an overseeing doctor
20 who treats the accused physician with disrespect and condescension. The accused must obey
21 the whims of the overseeing physician, as if they were a "slave." Such forms of discipline
22 are abusive and especially offensive for Black doctors.

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27 **VII. THE SHORTAGE OF CARDIO-VASCULAR SURGEONS**
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1 42. There is a severe national shortage of highly trained surgical subspecialists,
2 including cardiothoracic surgeons like Dr. Noble. Cardiothoracic surgeons traditionally
3 have to go to four years of medical school, do five additional years of residency in general
4 surgery, then do an additional two to five years of training in heart and lung surgical
5 fellowships. Each year, approximately 100 new cardiothoracic surgeons come out of
6 training. With retirement, burn-out and COVID, the total number of heart surgeons is barely
7 staying even. This shortage motivates the medical groups to try to bind the service of the
8 heart surgeon to the group, but because they have high salaries, groups often use sham
9 discipline and PIPs to retain heart surgeons.
10

11
12 **VIII. FACTS COMMON TO ALL CAUSES OF ACTION**

13 43. **Plaintiff's Protected Status:** PLAINTIFF is a Black male.

14 44. Dr. Noble joined the Gould Cardiothoracic Surgery department in 2018.
15 He submitted application for medical staff membership and was granted full privileges in
16 his specialty at both Memorial Medical Center Modesto ("MMC") and Doctors Medical
17 Center of Modesto Hospitals ("DMC"). These privileges allowed Dr. Noble to operate at
18 the hospital. Prior to his arrival, most of the heart surgeries at MMC and within the Gould
19 Medical Group were performed by Dr. Lit K. Fung, a senior partner at Gould and the head
20 of the Cardiothoracic Surgery department.
21

22 45. Dr. Lit K. Fung and the surgeons working with him had a high rate
23 of negative outcomes and poor comparative surgery results compared to national
24 averages.
25

26 46. Dr. Lit K. Fung had also failed to keep current on newer and more
27 precise surgery techniques such as the use of robotics.
28

1 47. Dr. Noble was told during recruitment that his role was to introduce more
2 modern skill sets, equipment and techniques to improve Sutter/Gould's record of poor
3 outcomes.

4 48. Dr. Fung self-describes himself as primarily a thoracic surgeon whose
5 secondary emphasis was vascular surgery. Thoracic surgery refers to operations on organs in
6 the chest, including the heart, lungs and esophagus. In general, thoracic surgeons mainly
7 treat lung cancer, lung disease, and diseases in the esophagus and chest wall. Cardiothoracic
8 surgeons, by contrast, operate on the lungs and esophagus but also focus on the heart.
9 Vascular surgery focuses on the vascular system, or arteries, veins and lymphatic
10 circulation. Dr. Noble had more specialized training in heart surgery than Dr. Fung.

11 49. Given the fact that Dr. Fung was reaching an age where many cardiothoracic
12 surgeons retire and his emphasis was on non-heart related aspects of medicine, it made
13 sense to Dr. Noble that he would be integrated into this medical group, introduce more
14 modern cardio techniques and improve their performance ratings in terms of patient
15 outcomes.

16 50. Dr. Fung, however, did not embrace Dr. Noble and from the outset barred
17 him from participating in complex surgeries, failed to train Dr. Noble in areas where Dr.
18 Fung's knowledge was current, and blocked Dr. Noble's attempts to obtain more modern
19 surgical supplies and equipment.

20 51. The attacks were insidious and used racial stereotypes and tactics that
21 belittled Dr.

22 Noble as a person and a physician in both the eyes of the public and staff.

23 52. Immediately upon Dr. Noble's arrival at MMC, Gould and Dr. Fung took
24

1 steps to hide the fact that Dr. Noble was African American. Medical groups regularly have
2 pictures of their physicians available on brochures and the internet. Patients read about the
3 doctors and look at their faces presumably to see if the doctor seems intelligent, skillful,
4 and compassionate. The marketing for Dr. Noble was almost non-existent. It took months
5 for Dr. Noble's name to appear on the Gould website, and when that finally happened
6 Sutter Gould failed to include pictures of Dr. Noble.

8 53. Dr. Fung and Sutter Gould repeatedly obstructed Dr. Noble's attempts to
9 establish and build his practice by preventing him from building a patient base. It is normal
10 to promote a new surgeon in the medical community by sending out notices of his/her
11 qualifications and by introducing him/her personally to physicians who might later refer
12 patients to that surgeon, run notices in newspapers, have the doctors do grand rounds at the
13 hospital, and generally make the physician visible in the community. This did not happen
14 with Dr. Noble. He was kept hidden as if his race were an embarrassment to those at Sutter
15 Gould in charge of Dr. Noble's career.

18 54. A respected surgeon would normally have an office with the surgeon's
19 name on the door. This helps people find the office and it indicates to patients that the
20 doctor has his own office. Dr. Fung refused to put Dr. Noble's name on the door. Dr.
21 Noble's office was tucked away so that it was difficult for to locate him. It was out of the
22 way so that patients going to other doctor's offices would not likely stumble upon the
23 black man sitting in Dr. Noble's office. Also, as his name was not on the door, patients
24 seeing this man of color might not think he was a doctor.

26 55. Despite his stellar surgical achievements – and years of experience – Dr.
27 Noble was treated as a novice and he was excluded from participation in the major medical
28

1 activities of the group. Implying that this African American surgeon did not deserve the
2 position that he had been hired for, Dr. Fung openly disparaged Dr. Noble and prevented
3 him from doing surgical procedures for which he was fully trained and credentialed.

4
5 56. Never did any physician or administrator at Gould oppose Dr. Fung or come
6 to Dr. Noble's defense, in spite of Dr. Noble's repeated requests and complaints. At this
7 time, as degraded as Dr. Fung's surgical skills had become and as poor as the hospital
8 survival and outcome results were, Dr. Fung was still the main income source for the
9 cardiothoracic surgery department at Sutter Memorial. He was a major cash cow and
10 regardless of his boorish behavior, Sutter Gould had a strong financial interest in supporting
11 him.
12

13 57. Sutter Gould was staffed by many substandard and poorly educated
14 physicians who were marginal in their abilities and qualifications. Financially, this group
15 was highly dependent upon Sutter Gould and Lit Fung for their professional careers and
16 income. They marched in lockstep to the instructions, both express and implied, of Dr.
17 Fung, Sutter Gould, and Sutter. They froze Dr. Noble out of medical interactions and
18 subverted him with great frequency and by extension expanded the racist culture of Sutter
19 Gould and Sutter Memorial.
20

21 58. As the early surgical data was presented it became clear that even in a
22 second-tier hospital, which lacked supplies and had poor surgical support, Dr. Noble's
23 outcomes were as good as or better than national averages. This contrasted sharply with
24 the high failure rates of Dr. Fung and the other surgeons. Rather than promote Dr. Noble
25 and provide better patient care Sutter Gould and Dr. Fung increased their interference with
26 Dr. Noble by limiting his surgeries and by giving him second rate surgical teams in order
27
28

1 to make his success rate drop.

2 59. Dr. Noble saw other physicians, intimidated into complicity, snicker as he
3 attempted to speak with Dr. Fung about necessary changes to improve patient care and
4 safety. It was a running joke that Dr. Fung would not even speak to Dr. Noble unless Dr.
5 Noble called or e-mailed Dr. Fung's wife and made an appointment – literally. Dr. Fung's
6 wife was not an employee of Gould or Sutter, but Dr. Noble – who was supposed to be Dr.
7 Fung's partner – had to communicate through Dr. Fung's wife, who was rude and often
8 blocked communication. Insofar as she was allowed to interject herself and impede
9 medical conversations, she was acting as an agent of Dr. Fung, Sutter, and Sutter Gould.
10 This arrangement was bizarre and demeaning to Dr. Noble.
11

12 60. Prior to Dr. Noble's arrival, Dr. Fung took 90% of the cardiac cases at MMC.
13 Dr. Noble was more recently and better trained in heart surgery than Dr. Fung, but after Dr.
14 Noble's arrival Dr. Fung continued to take 90-plus percent of cardiac cases. Sutter Gould
15 made no effort to redistribute the cases, even though Dr. Noble's career advancement and
16 salary depended upon his ability to do a fair number of heart surgeries. Dr. Noble's career
17 clock was ticking. If he remained at MMC doing a low number of serious surgeries, his skill
18 level would not be advanced and his growth in the medical community was thwarted.
19

20 61. To damage and destroy Dr. Noble, Sutter Gould and Dr. Fung set forth on a
21 course that prevented Dr. Noble from leaving Sutter Gould without suffering enormous
22 harm to his reputation and employability, Dr. Noble was trapped while his career was being
23 destroyed by Sutter Gould and Dr. Fung's malicious and racially biased conduct.
24

25 62. Among the obstructions placed in the way of Dr. Noble was the fact that
26 Gould deliberately left him off the emergency room call schedule. Physicians assigned to
27
28

1 take call would be paid a reasonable amount of money for being available to see heart and
2 lung patients who showed up in the ER. Doctors on call not only were able to bill fees for
3 procedures they did, but they were also paid a stipend for each shift of call they did. More
4 importantly, the on-call physician would have access to new cases that came into the
5 hospital on an emergency basis. Dr. Fung and his wife, Judy Fung, controlled the call
6 schedule, and systematically excluded Dr. Noble from that schedule. Dr. Noble repeatedly
7 asked Dr. Fung to place his name on the schedule and Dr. Fung refused. Dr. Fung gave no
8 reason, he just said “not yet.” No policy or rule promulgated by any of the Defendants
9 authorized or sanctioned Dr. Fung’s discriminatory act.
10
11

12 63. Dr. Noble discussed his exclusion from the call schedule with Dr. John
13 Talieh. Dr. Talieh was Sutter Memorial’s Chair of Credentialing as well as Chief of Surgery
14 and Department Chair. In those capacities he was a member of the evaluation/decision-
15 making team along with the Physician Compensation Committee, and a member of the Peer
16 Review Committee. He had the ability to intervene. However, he was financially dependent
17 upon Dr. Fung and had historically received Dr. Fung’s overflow cases. Dr. Talieh justified
18 Dr. Noble’s exclusion claiming that Dr. Noble had “limited experience in vascular surgery,”
19 which was not true. Dr. Noble was told he could not take call until Dr. Talieh “felt
20 comfortable.” This statement was untrue and many physicians who were placed “on call”
21 had far less experience and qualifications.
22
23

24 64. These statements had no factual basis and were simply meant to justify
25 behavior that was predatory and racist. Nonetheless, Dr. Noble attempted to work with Dr.
26 Talieh to no avail.
27

28 65. Dr. Noble even offered to take a second position to Dr. Fung during

1 surgeries in order to prove to Dr. Talieh and Dr. Fung that he was fully qualified. Dr.
2 Fung refused to do this, and he disparaged Dr. Noble by stating that because vascular
3 surgery cases are highly litigious, and he did not want to “go down” because of a mistake
4 Dr. Noble might make. As Dr. Fung did not permit Dr. Noble to even assist on a surgery,
5 it was clear that he had no intention of allowing Dr. Noble to be the primary surgeon on
6 any significant case or to ever have a normal “on call” schedule or otherwise build the
7 professional practice promised to him when he was recruited.
8

9 66. Dr. Fung and Dr. Talieh deprived Dr. Noble of Emergency Room call for
10 his entire 1.5-year tenure, even though Dr. Noble had full privileges at Sutter Memorial
11 Medical Center Modesto. This was a gross violation of Dr. Noble’s rights as a physician
12 that impugned his reputation and demonstrated that he was singled out for mistreatment by
13 Dr. Fung. Emergency Room call is an essential practice-building mechanism for
14 cardiothoracic surgeons. This exclusion directly contributed to Dr. Noble’s difficulty
15 building his practice, as well as isolating him even further professionally. It kept him from
16 developing professional relationships with ER doctors and receiving referrals from them.
17

18 67. Dr. Noble repeatedly reached out to those in leadership positions at the
19 hospital and Sutter Gould to discuss the issues he was facing.
20

21 68. Dr. Noble had conversations with Dr. David Roberts, the Regional
22 Medical Director of Cardiovascular Services at Sutter Health Sacramento, regarding
23 concerns with on-boarding, his inability to take calls, the lack of support he was
24 receiving, and the overall racism he encountered.
25

26 69. Dr. Noble spoke with Chris Rogers, the Operations Director of Surgical
27 Care, about the treatment he was facing had on his career.
28

1 70. Dr. Noble spoke with Dr. Bruce Lavery, the Sutter MMC Chief Medical
2 Officer, regarding the lack of cardiac cases and the effect on both his career and the
3 quality of care for patients at the institution.
4

5 71. Dr. Noble spoke with Richard Leal, Gould's Director of Growth and
6 Strategy, about these same issues.

7 72. Because Dr. Noble was kept from building a practice and presence at
8 Sutter Memorial and within Sutter Gould, Dr. Fung continued to monopolize the
9 department, and complication rates remained high. Thus, as a direct result of this
10 discrimination, patients were deprived of the best possible cardiothoracic care.
11

12 73. On March 8, 2019, Dr. Noble even reached out to Todd Smith, Gould's
13 Medical Director, to schedule a meeting, which ultimately took place on April 19, 2019. At
14 this meeting, Dr. Noble addressed these many issues including the specific fact that Dr.
15 Fung, individually and through his wife, were perpetuating inequitable referral patterns, and
16 as a result Dr. Noble had low surgical volume and a lack of meaningful surgeries that were
17 reassigned, lower-level surgical teams and other matters including inadequate surgery room
18 equipment. Nothing was done to remediate the discrimination and disparate treatment Dr.
19 Noble received or to address Dr. Noble's concern about the quality of patient care.
20

21 74. Dr. Noble also recognized that Dr. Fung was lobbying his friends in the
22 anesthesia department to gossip about and disparage Dr. Noble. There was literally a
23 group of doctors who, deliberately and in concert with each other, were undermining Dr.
24 Noble's career.
25

26 75. Despite Dr. Noble's many conversations with supervisors, nothing was done
27 to alleviate the discrimination and obstructions. In fact, it got worse.
28

1 76. In the Spring of 2019, Dr. Noble faced yet another arbitrary reduction of
2 his role in performing cardiac cases. This was done by cardiologist, Dr. Amar Pohwani,
3 and an anesthesiologist, Dr. Linda Hormozi, both of whom relied financially on their
4 relationship with Dr. Fung.
5

6 77. Both of these physicians received their medical degrees from non-U.S.
7 based facilities. In fact, Dr. Hormozi's school was a for-profit, low prestige medical
8 school in Barbados. Their lack of academic qualification made them highly vulnerable and
9 in low demand in the medical community. They protected their jobs by supporting Dr.
10 Fung's racist attacks against Dr. Noble to an extreme degree.
11

12 78. On March 21, 2019, Dr. Hormozi was the anesthesiologist of record for a
13 procedure Noble was scheduled to perform. However, she refused to put the patient to
14 sleep, citing baseless and illegitimate concerns over Dr. Noble's privileges to perform the
15 procedure. Her actions constituted patient abandonment.
16

17 79. Soon thereafter, Dr. Talieh informed Dr. Noble about a so-called "letter of
18 concern" from the anesthesia department about Dr. Noble's clinical abilities. This
19 signaled to Dr. Noble that "the gloves were off" and that the full onslaught had begun.
20 But as shown below, Sutter Gould kept Dr. Noble a captive at Sutter Gould, and he had to
21 endure the attacks without the ability to ever face his attackers or leave. Dr. Noble spoke
22 with the anesthesiology chief, who said this "letter of concern" was not in fact a letter, but
23 rather a list of patient names and cases that needed to be reviewed. Dr. Noble never saw
24 any 'letter of concern,' or any list of patients. Ultimately, neither Sutter Health Memorial
25 nor Sutter Gould ever proved that Dr. Noble's care was in any way substandard. To the
26 contrary, the statistics showed Dr. Noble's quality of care was better than any other
27
28

1 surgeon in his specialty at Sutter Gould.

2 80. This supposed list, with Dr. Fung's knowledge and approval, was forwarded
3 to the Quality and Safety Department at Sutter Gould. Despite this attack, Dr. Noble
4 attempted to work within Sutter Gould to deal with what was happening to him.
5

6 81. Dr. Noble spoke with the Anesthesia Department Chair to address his
7 concerns about the lack of transparency around this "letter" – which could affect patient
8 care and his reputation. No matter who he spoke to, the person listened and nothing was
9 done to address Dr. Noble's questions or concerns. Dr. Noble was like James Baldwin's
10 Invisible Man.
11

12 82. Dr. Noble reached out to Dr. Fung in an effort to discuss the matter, but
13 Dr. Noble was not even given an appointment to speak with Dr. Fung. He was ignored.
14

15 83. In May 2019, Dr. Noble was locked into working at Gould and could
16 not leave without destroying his career, due to the threat of a National Practitioner
17 Data Bank Report. (The National Practitioner Data Bank is a centralized registry of
18 doctors with malpractice or disciplinary histories. Every physician employer,
19 hospital, or health plan is required by law to check the Data Bank before
20 credentialing a doctor. It has the power to ruin a doctor's career (45 C.F.R. § 60.17).
21 Under Data Bank guidelines, a physician who resigns while under a PIP or under
22 investigation must be reported.)
23

24 84. Therefore, once the letter of concern was written, Dr. Noble was in the
25 process of being frozen at Gould. Days later, he was notified by Sutter Memorials Quality and
26 Safety Department that seven of his cases from Dr. Fung's department were under review.
27 At this stage, Dr. Noble was trapped. He could not resign without being reported. Dr. Fung
28

1 and Gould could abuse him to their heart's content, and he had to endure it.

2 85. There was no basis for the complaints against Dr. Noble, and they were
3 not filed for any purpose other than to trap Dr. Noble and subject him to discrimination
4 and abuse.
5

6 86. Meanwhile, the degradation of Dr. Noble's career increased. Just four
7 days after the charges went forward, the schedule for TAVR procedures was changed.
8 (TAVR is a way of inserting an artificial valve into a damaged heart valve without
9 removing it.) TAVR was a critical portion of Dr. Noble's training at Ohio State
10 University, and he stayed current and proficient in techniques during his time in the Navy
11 working with one of the highest-volume community programs in the Mid-Atlantic region
12 Sentara Norfolk General Hospital. Despite having more skill and training in TAVR
13 procedures than Dr. Fung, Dr. Noble was removed from the TAVR schedule and
14 replaced by Dr. Fung.
15

16 87. Even when Dr. Noble was allowed to perform TAVR, he was attacked.
17 The most gross attacks were perpetrated by non-Black doctors who graduated from
18 marginal medical schools and who were therefore highly dependent upon Dr. Fung and
19 Dr. Talieh. In this case August 13, 2019, Nurse Practitioner Mari Rossini, the NP-
20 Program Coordinator of the Structural Heart Clinic at MMC, decided that Dr. Noble
21 needed a proctor during TAVR surgery. Nurses have no authority to make proctoring
22 decisions. Only doctors may do so through medical staff processes laid out in the medical
23 staff bylaws.
24

25 88. Sutter Gould parlayed these baseless attacks on Dr. Noble to their financial
26 advantage. On September 4, 2019, Dr. Noble was notified that his salary would be cut by 23
27
28

1 percent, putting his earnings below the 25th percentile of what a cardiothoracic surgeon
2 normally makes. No justification was provided.

3 89. In an attempt to understand this abrupt salary reduction, Dr. Noble met with
4 Dr. Peterson on September 25, 2019. Dr. Peterson told him that although his “compensation
5 is guaranteed, the amount is not.” He further stated that the Physician Compensation
6 Committee based its decisions on “metrics” and “expectations,” which were never conveyed
7 to Dr. Noble. Unbeknownst to Dr. Noble, Dr. Fung and Dr. Talieh were members of the
8 Physicians Compensation Committee.
9

10 90. Dr. Noble’s ability to meet any metrics or expectations had been crushed by
11 the discriminatory abuses of Dr. Fung and Dr. Talieh. One metric which appears not to have
12 been considered was the success rate in surgery, for which Dr. Noble met national standards
13 while Dr. Fung and the other surgeons did not.
14

15 91. On September 29, 2019, Dr. Talieh tried to coerce Dr. Noble into
16 “voluntarily” agreeing to a Performance Improvement Plan (“PIP”). This agreement
17 would require Dr. Noble not to exercise vascular surgery privileges and to agree to
18 concurrent proctoring on all cardiac and thoracic cases for six (6) months, complete a
19 master’s Course in vascular surgery within six (6) months, and, at the end of the six-
20 month period, a committee would reevaluate his progress.
21

22 92. The “PIP” was a trap. Any resignation during the pendency of a PIP is
23 considered a “resignation while under investigation” and is reportable to the National
24 Data Base. If Dr. Noble had agreed to the PIP, he would have admitted the correctness of
25 the racially motivated false assessments of his skills.
26

27 93. Dr. Noble refused the to sign PIP.
28

1 94. On October 8, 2019, Dr. Noble received a letter from Dr. Kanthi Kiran, the
2 Chief of Staff, and an Emergency Room physician. Dr. Kiran notified him that the
3 Medical Executive Committee had initiated an investigation into the six remaining cases
4 under review. This committee was formed without any input from Dr. Noble. This same
5 letter inaccurately claimed that Dr. Noble had agreed to a PIP plan.
6

7 95. Dr. Noble hired an attorney and notified Sutter Gould via email that Dr.
8 Noble had not agreed to be “voluntarily proctored on all cases.”
9

10 96. The “investigation” purported to focus on patient safety even though, at this
11 time Memorial had very poor outcome and complication rates compared to national
12 averages because of its reliance on Dr. Fung (See Exhibit K).

13 97. Sutter Memorial’s mean and median cardiopulmonary bypass time was
14 approximately 40% longer than the national average. The longer the bypass time, the
15 more the patient is exposed to complications and even death.
16

17 98. A recognized sign of complication is whether the patient has to come
18 back to the hospital within thirty days. Sutter Memorial’s thirty-day readmission rate
19 for cardiothoracic cases was approximately twice the national average. Likewise, other
20 measurements of cardiothoracic surgeries at Sutter Memorial were abysmal.

21 99. Dr. Noble’s numbers were much higher and in line with the national
22 average. Most of the national statistics drawn from university hospitals and major heart
23 centers. Dr. Noble’s statistics were a remarkable accomplishment given the substandard
24 physical facility and second-rate support teams at Sutter Memorial provided to him and his
25 patients.
26

27 100. Incredibly, on December 5, 2019 Dr. Peterson announced that Dr.
28

1 Noble's salary was being reduced again. In less than one year his salary had been cut
2 by 60%. This made Dr. Noble the lowest paid full-time cardiothoracic surgeon in the
3 country.

4
5 101. The compensation "committee" imposing these cuts included Dr. Fung
6 and Dr. Talieh. The cuts to Dr. Noble's salary increased their income by reducing his
7 payout. They also benefited economically by shifting his work to themselves.

8 102. Dr. Noble's contract, Exhibit C, has his salary set out in attachment A-
9 1. It allows salary adjustments once a year, so these multiple cuts were contrary to the
10 contract. But Dr. Noble could not resign because he was "under investigation". Almost
11 any indignity had to be endured.

12
13 103. Specifically, the contract document states in part that "... a
14 compensation review maybe conducted after one year of employment and/or annually
15 thereafter during any extended term of this Agreement. Any change in compensation
16 will be based on Employee's level of activity and commitment to employer, as well as
17 considerations of quality service." However, Defendants were doing everything
18 possible to limit Dr. Noble's "activity" and Dr. Noble's complaints about the
19 discriminatory treatment he was suffering were viewed as disloyal or lacking in
20 "commitment to the employer." In cutting Dr. Noble's salary, the Compensation
21 Committee disregarded the fact that Dr. Noble's quality of care exceeded that of other
22 Sutter Gould surgeons in his specialty.

23
24
25 104. Ultimately, Dr. Noble was made to suffer through nearly ten months of
26 abuse while the peer review was pending. It ended in February 2020 and his coerced
27 servitude was ended.

1 105. In March 2020, Dr. Noble was finally able to resign from Sutter Gould and
2 the
3 medical staff of Sutter Memorial.
4

5 106. Defendants' wrongful conduct herein caused Plaintiff to suffer and incur
6 general damages, special damages, and attorney's fees (as damage items). Plaintiff prays
7 for these items as part of his damages.

8 107. Plaintiff further seeks attorney's fees for prosecuting this action,
9 attorney's fees as allowed by statute, such costs, multipliers, statutory remedies, and other
10 relief as allowed by law and/or statute.
11

12 108. Defendants' actions were oppressive, fraudulent, and malicious. Whereby
13 Plaintiff seeks punitive damages within this case.

14 **EXHAUSTION OF REMEDIES**

15 109. Dr. Noble has exhausted all internal remedies required by Defendants'
16 employment contract or bylaws.
17

18 110. Exhibit L is a "Right to Sue" letter from the DFEH evidencing the
19 compliance with the administrative process that is a condition precedent to the right to sue
20 on that count.
21

22 **COUNT 1**
23 **(U.S.C. 1981)**

24 111. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully
25 herein.

26 112. Plaintiff is a member of a protected class under 42 U.S.C. 1981 and
27 the conduct alleged herein was motivated by racial bias, animus and prejudice. It was
28

1 designed to harm,damage and impair the contractual rights of Dr. Noble with various
2 entities affecting his livelihood.

3 113. The contracts which were interfered with were his contracts with
4 Sutter Gould and his hospital privileges at Sutter MMC as well as its related Sutter
5 affiliated entities.
6

7 114. Defendants Sutter Gould and Fung interfered and impaired the
8 performance of each of these and their conduct was the direct and but-for cause of the
9 harms and damages alleged herein.
10

11 115. As set forth herein and according to further proof, the conduct of
12 Defendants and each of them constituted harassment, retaliation, discrimination, and
13 interference with the execution of the contracts referenced herein due to race.

14 116. The conduct herein substantially impaired the value of the contracts and
15 further led to the constructive discharge of Dr. Noble from Sutter Gould and constructively
16 forced the termination of his privileges at the hospitals set forth herein.
17

18 117. The policies and practices set forth herein were done with a discriminatory
19 intent.

20 118. Plaintiff seeks general damages, special damages, and punitive damages
21 according to proof; as well as statutory damages according to proof; costs, attorney's
22 fees and such further relief including, but not limited to, injunctive relief as allowed by
23 law. Defendants' misconduct was committed intentionally, in a malicious, despicable,
24 oppressive, fraudulent manner, entitling Plaintiff to punitive damages against Defendants.
25 The conduct was done with a conscious disregard of the rights and interests of Plaintiff
26

27 119. The conduct of each Defendant individually and in concert were malicious,
28

oppressive and/or in reckless disregard of the Plaintiff's rights. The conduct was accompanied by ill will, spite and/or for the purpose of injuring the Plaintiff.

COUNT 2
(Violation of FEHA (Government § 12900, et seq.))
(Race Discrimination)

120. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

121. Defendants' conduct, both individually and in deliberate conspiracy to cause harm and/or to violate the law as alleged herein, violated FEHA, Government Code section 12900, et seq., and Defendants committed unlawful employment practices, including by the following bases for liability:

- a. Discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or otherwise discriminating against Plaintiff, in whole or in part on the basis of Plaintiff's race, national origin, and/or color, in violation of Government Code section 12940(a);
- b. Harassing Plaintiff and/or creating a hostile work environment, in whole or in part on the basis of Plaintiff's race, national origin, and/or color, in violation of Government Code section 12940(j);
- c. Failing to take all reasonable steps to prevent discrimination and harassment based on race, in violation of Government Code section 12940(k);
- d. Retaliating against Plaintiff for seeking to exercise rights guaranteed under FEHA and/or opposing Defendants' failure to provide such rights, in violation of Government Code section

12940(h).

122. As a proximate result of Defendants' willful, knowing, and intentional discrimination against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses of earnings and other employment benefits.

123. As a proximate result of Defendants' willful, knowing, and intentional discrimination against Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to his damage in as much according to proof.

124. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.

125. Pursuant to Government Code section 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

126. Defendants' misconduct was committed intentionally, in a malicious, despicable, oppressive, fraudulent manner, entitling Plaintiff to punitive damages against Defendants. The conduct was done with a conscious disregard of the rights and interests of Plaintiff.

COUNT 3

Violation of FEHA (Government § 12900, et seq.) (Race Harassment)

127. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

128. Defendants' conduct, both individually and in deliberate conspiracy to cause harm and/or to violate the law as alleged herein.

1 129. Defendants' conduct, as alleged, violated FEHA, Government Code
2 section 12900, et seq., and Defendants committed unlawful employment practices,
3 including by the following bases for liability:
4

- 5 e. Harassing Plaintiff and/or creating a hostile work environment, in
6 whole or in part on the basis of Plaintiff's race, national origin,
7 and/or color, in violation of Government Code section 12940(j);
8
9 f. Failing to take all reasonable steps to prevent discrimination,
10 harassment, and retaliation based on race, national origin, and/or
11 color, in violation of Government Code section 12940(k)

12 130. As a proximate result of Defendants' willful, knowing, and
13 intentional harassment of Plaintiff, Plaintiff has sustained and continues to
14 sustain substantial losses of earnings and other employment benefits.
15

16 131. As a proximate result of Defendants' willful, knowing, and intentional
17 harassment of Plaintiff, Plaintiff has suffered and continues to suffer humiliation,
18 emotional distress, and physical and mental pain and anguish, all to his damage in a sum
19 according to proof.

20 132. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.

21 133. Pursuant to Government Code section 12965(b), Plaintiff is entitled
22 to recover reasonable attorneys' fees and costs (including expert costs) in an
23 amount according to proof.
24

25 134. Defendants' misconduct was committed intentionally, in a malicious,
26 despicable, oppressive, fraudulent manner, entitling Plaintiff to punitive damages
27 against Defendants.
28

COUNT 4

**Violation of FEHA (Government Code § 12940(k))
(Failure to Prevent Discrimination, Harassment, and
Retaliation)**

135. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

136. Defendants' conduct, both individually and in deliberate conspiracy to cause harm and/or to violate the law as alleged herein.

137. At all times herein mentioned, FEHA, Government Code section 12940(k), was in full force and effect and was binding on Defendants. This statute states that it is an unlawful employment practice in California for an employer "to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring." Prior to filing the instant Complaint, Plaintiff filed a timely administrative charge with the DFEH and received a right-to-sue letter.

138. During the course of Plaintiff's employment, Defendants failed to prevent their employees from engaging in intentional actions that resulted in Plaintiff's being treated less favorably because of Plaintiff's protected status. During the course of Plaintiff's employment, Defendants failed to prevent their employees from engaging in unjustified employment practices against employees in such protected class and/or other protected classes as well as Plaintiff's protected class. During the course of Plaintiff's employment, Defendants failed to prevent a pattern and practice by their employees of intentional discrimination and harassment on the bases of race, national origin, color, sexual orientation, marital status, and/or other protected statuses or protected activities.

139. Plaintiff believes and on that basis alleges that his race and/or other protected status and/or protected activity were substantial motivating factors in Defendants' employees' discrimination against and harassment of him.

140. As a proximate result of Defendants' willful, knowing, and intentional misconduct, Plaintiff has sustained and continues to sustain substantial losses of earnings and other employment benefits.

141. As a proximate result of Defendants' willful, knowing, and intentional misconduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to his damage in a sum according to proof.

142. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.

143. Pursuant to Government Code section 12965(b), Plaintiff is entitled to recover reason-able attorneys' fees and costs (including expert costs) in an amount according to proof.

144. Defendants' misconduct was committed intentionally, in a malicious, despicable, oppressive, fraudulent manner, entitling Plaintiff to punitive damages against Defendants.

COUNT 5
Wrongful Constructive Termination of Employment in Violation of Public Policy
(LaborCode § 1102.5; FEHA, Government Code § 12900, et seq.)

145. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

146. Defendants' conduct, both individually and in deliberate conspiracy to cause harm and/or to violate the law as alleged herein.

1 147. Defendants constructively terminated Plaintiff's employment in violation of
2 various fundamental public policies underlying both state and federal laws. Specifically,
3 Plaintiff's employment was terminated in part because of his protected status, including his
4 race, and his complaints about inappropriate and unfair practices. These actions were in
5 violation of FEHA, the California Constitution, and California Labor Code section
6 1102.5.
7

8 148. As a proximate result of Defendants' wrongful constructive termination of
9 Plaintiff's employment in violation of fundamental public policies, Plaintiff has suffered
10 and continues to suffer humiliation, emotional distress, and mental and physical pain and
11 anguish, all to his damage in a sum according to proof.
12

13 149. As a result of Defendants' wrongful termination of his employment, Plaintiff
14 has suffered general and special damages in sums according to proof.
15

16 150. Defendants' wrongful constructive termination of Plaintiff's
17 employment was done intentionally, in a malicious, fraudulent, oppressive, fraudulent
18 manner, entitling Plaintiff to punitive damages.

19 151. Plaintiff has incurred and continues to incur legal expenses and attorneys'
20 fees.
21

22 152. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, et
23 seq., Plaintiff is entitled to recover reasonable attorneys' fees and costs in an
24 amount according to proof.

25 **COUNT 6**
26 **Violation of FEHA (Government Code § 12900, et**
27 **seq.)**
28 **(Retaliation for Engaging in Protected Activity)**

29 153. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully

herein.

154. Defendants' conduct, both individually and in deliberate conspiracy to cause harm and/or to violate the law as alleged herein Plaintiff's complaints to Defendants about harassment, race and abusive treatment is protected by FEHA, Government Code section 12900, et seq. These protected matters/conduct were motivating factors in Defendants' decision not to support, train, to cut pay and to otherwise diminish the job and employment of and/or to take the various other adverse employment actions, including constructive employment termination, against Plaintiff.

155. Defendants' conduct, as alleged, violated FEHA, Government Code section 12900, et seq., and Defendants committed unlawful employment practices, including by the following, separate bases for liability:

- g. Barring, discharging, refusing to transfer, retain, hire, select, and/or employ, and/or otherwise discriminating against Plaintiff, in whole or in part on the basis of Plaintiff's actual and/or perceived sexual orientation, marital status, race, and/or other protected characteristics, in violation of Government Code section 12940(a);
- h. Retaliating against Plaintiff for his complaints to Defendants about the harassment he was experiencing by taking adverse employment actions against him, in violation of Government Code section 12940(f);
- i. Harassing Plaintiff and/or creating a hostile work environment, in whole or in part on the basis of Plaintiff's actual and/or perceived sexual orientation, marital status, race, and/or other protected characteristics, in

violation of Government Code section 12940(j);

j. Failing to take all reasonable steps to prevent discrimination, harassment, and retaliation on the basis of actual and/or perceived sexual orientation, marital status, and race, in violation of Government Code section 12940(k);

k. Retaliating against Plaintiff for seeking to exercise rights guaranteed under FEHA and/or opposing Defendant's failure to recognize such rights, including the right to be free of discrimination, in violation of Government Code section 12940(h).

156. As a proximate result of Defendants' willful, knowing, and intentional discrimination against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses of earnings and other employment benefits.

157. As a proximate result of Defendants' willful, knowing, and intentional discrimination against Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to his damage in a sum according to proof.

158. Defendants' misconduct was committed intentionally, in a malicious, despicable, oppressive, fraudulent manner, entitling Plaintiff to punitive damages against Defendants.

159. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.

160. Pursuant to Government Code section 12965(b), Plaintiff is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount

1 according to proof.

2 **COUNT 7**

3 **Violations of Labor Code § 1102.5, et seq**

4 161. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully
5 herein.

6 162. Defendants' conduct, both individually and in deliberate conspiracy to
7 cause harm and/or to violate the law as alleged herein.

8 163. At all relevant times, Labor Code section 1102.5 was in effect and was
9 binding
10 on Defendants. This statute prohibits Defendants from retaliating against any employee,
11 including Plaintiff, for raising complaints of illegality.

12 164. Plaintiff raised complaints of illegality while he worked for
13 Defendants, and Defendants retaliated against him by discriminating against him,
14 harassing him, and taking adverse employment actions, including employment
15 termination, against him.

16 165. As a proximate result of Defendants' willful, knowing, and
17 intentional violations of Labor Code section 1102.5, Plaintiff has suffered and continues
18 to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to
19 his damage in a sum according to proof.

20 166. As a result of Defendants' adverse employment actions against
21 Plaintiff, Plaintiff has suffered general and special damages in sums according to proof.

22 167. Defendants' misconduct was committed intentionally, in a malicious,
23 oppressive, fraudulent manner, entitling Plaintiff to punitive damages against Defendants.

24 **COUNT 8**

CALIFORNIA EQUAL PAY ACT
California Labor Code § 1197.5, et seq

168. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

169. Defendants' conduct, both individually and in deliberate conspiracy to cause harm and/or to violate the law as alleged herein.

170. Plaintiff suffered harm as defined by California Labor Code § 1197.5, et seq. by paying receiving pay and benefits less than similarly situated and/or lesser qualified physicians who performed the same or substantially similar work when viewed as a composite of skill, effort, and responsibility, and which were performed under SUTTER GOULD so discriminated by subjecting Dr. Noble to discriminatory pay, pay cuts, and discriminatory denials of bonuses, promotions and other advancement opportunities including training, promotion, on-call shifts, proper staffing and other matters set forth herein, each individually and as an aggregate, would have resulted in higher compensation.

171. SUTTER GOULD caused, attempted to cause, contributed to, or caused the continuation of, the wage rate discrimination based on race in violation of the California Fair Pay Act. Moreover, SUTTER GOULD willfully violated the California Fair Pay Act by intentionally, knowingly, and deliberately paying Plaintiff less than similarly-situated physicians.

172. As a result of Sutter Gould's knowing and intentional discrimination, Plaintiff has suffered and will continue to suffer harm, including but not limited to, lost earnings, lost benefits, and other financial loss, as well as noneconomic damages.

173. Plaintiff is therefore entitled to all legal and equitable remedies,

1 including but not limited to compensatory damages, and liquidated damages as provided
2 by law.

3 174. Attorneys' fees should be awarded under California Labor Code § 1197.5.
4

5 **COUNT 9**
6 **Discrimination and Retaliation: Health and Safety Code §**
7 **1278.5**

8 175. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully
9 herein.

10 176. Dr. Noble repeatedly stated his concerns to both the administration and
11 medical staff of Sutter Memorial and the management of Sutter Gould, and to Drs. Fung and
12 Talieh, regarding significant patient safety issues, including but not limited to: Sutter
13 Memorial's use of antiquated surgical equipment, its refusal to update their OR as promised
14 to Dr. Noble, the assignment of physicians and OR staff with inferior skills to his surgical
15 team whose lack of skills and training endangered patient safety, and the concerted efforts
16 by Defendants to route patients to Dr. Fung even though he was provably a surgeon with
17 worse outcomes than Dr. Noble.
18

19 177. Defendants ignored Dr. Noble's complaints, suggestions, and efforts to
20 improve patients safety and the quality of care.

21 178. Instead, as set forth herein, Defendants directly and indirectly discriminated
22 and retaliated against Dr. Noble because of his complaints, grievances, and reports to
23 Defendants.
24

25 179. Said discrimination and retaliation occurred within 120 days of Dr. Noble's
26 constructive discharge from Sutter Gould and his constructive forced resignation from Sutter
27 Memorial.
28

1 180. Said discrimination and retaliation included Dr. Noble's constructive
2 discharge, his forced resignation from the Sutter Memorial Medical staff, his demotion at
3 Sutter Gould, the diminishment of his privileges at Sutter Memorial, and the multiple
4 breaches of his employment agreement with Sutter Gould and the covenant of good faith
5 implied therein.
6

7 181. Wherefore, Plaintiff is entitled to \$25,000 in civil penalties, reinstatement,
8 reimbursement of his lost wages and work benefits, and the legal costs associated with
9 pursuing this case.
10

11 **COUNT 10**
12 **Intentional Infliction of Emotional Distress**

13 182. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully
14 herein.

15 183. Defendants' conduct, both individually and in deliberate conspiracy to
16 cause harm and/or to violate the law as alleged herein.

17 184. Defendants' discriminatory, harassing, and retaliatory actions against
18 Plaintiff constituted severe and outrageous misconduct and caused Plaintiff extreme
19 emotional distress.
20

21 185. Defendants were aware that treating Plaintiff in the manner alleged
22 above, including depriving Plaintiff of his livelihood, would devastate Plaintiff and cause
23 him extreme hardship.

24 186. As a proximate result of Defendants' extreme and outrageous conduct,
25 Plaintiff has suffered and continues to suffer severe emotional distress. Plaintiff has
26 sustained and continues to sustain substantial losses of earnings and other employment
27
28

benefits as a result of being emotionally distressed.

187. Defendant Lit Fung personally profited from his abusive conduct directed toward Plaintiff.

188. As a proximate result of Defendants' extreme and outrageous conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

189. Defendants' misconduct was committed intentionally, in a malicious, oppressive, fraudulent manner, entitling Plaintiff to punitive damages.

COUNT 11
Negligent Infliction of Emotional Distress

190. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

191. Defendants' conduct, both individually and in conspiracy did cause harm to Plaintiff.

192. Defendants were in a special relationship to Plaintiff and were both partners and fiduciaries.

193. Their conduct breached their duties to Plaintiff and caused him the harms alleged in this complaint which include general and special damages.

194. The conduct of Defendants and each of them were negligent and said negligence was a substantial cause of the harms suffered by Plaintiff.

195. The conduct of defendant was wanton, willful, malicious and done with a conscious disregard for the rights, and interests of plaintiff. Therefore, plaintiff is entitled to punitive and exemplary damages.

COUNT 12
(Breach of Contract Against Sutter and Sutter Gould)

196. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

197. Defendants' conduct, both individually and in deliberate conspiracy to cause harm and/or to violate the law as alleged herein.

198. Plaintiff performed each and every term, condition, and requirement of the contract.

199. Sutter participated in Dr. Noble's recruitment and was an implied party to the contract.

200. The conduct set forth herein breached the express terms of the contract.

201. The breaches by Defendant were continuing and material both individually and considered as a whole.

202. The contract contained a covenant of good faith and fair dealing implied by law.

203. The conduct herein breached that covenant and among the other damages set forth herein caused him to incur attorney's fees as special items of damage as allowed by law.

COUNT 13
**(Deliberate Inducement to Breach
Contract)**
(Against Defendant Lit K. Fung only)

204. Plaintiff realleges paragraphs 1-110 of this complaint as if set forth fully herein.

205. Defendant Lit K. Fung acted both individually and in deliberate conspiracy

1 to cause harm and/or to violate the law as alleged herein. The names and identities of these
2 additional co-conspirators are alleged herein as Does 1-100.

3 206. There was a contract between Sutter Gould and Dr. Noble.

4 207. Lit K. Fung acted with the deliberate intention to cause a breach of the
5 contract between Sutter Gould and MMC and Dr. Noble. He did not merely act
6 intentionally with malice, he acted intentionally with the purpose of causing the breaches
7 of contract and causing harm to Plaintiff.
8

9 208. The conduct of Lit K. Fung alone and in concert with his co-conspirators
10 did in fact cause multiple breaches of the contract by Gould to the detriment of Dr. Noble.
11

12 209. This wrongful conduct of Lit K. Fung and his conspirators both alone and
13 in concert were the substantial cause of harms and damages suffered by Plaintiff.
14

15 **ELECTION OF REMEDIES**
16

17 210. Plaintiff alleges that despite the promises made to sign the contract
18 Gould never intended to promote him, pay him a reasonable salary, develop his skills
19 or engage him as a fully active member of the Gould medical team. The contract was
20 induced by fraud and Plaintiff hereby exercises his right to declare the contract null and
21 void and pursue his damages in tort. Alternatively, a breach of contract count has been
22 pled.
23

24 **PRAYER FOR RELIEF**

25 Wherefore, Plaintiff prays for relief as follows:

26 **Count 1**
27 **(42 U.S.C.1981)**

28 1. General damages according to proof;

2. Special damages according to proof;
3. Statutory remedies;
4. Punitive and exemplary damages;
5. Attorney's fees and costs according to proof;
6. Injunctive and equitable relief as the Court deems proper;
7. Such other and further relief as the Court deems proper.

Count 2
(Violation of FEHA (Government § 12900, et seq.)
(Race Discrimination)

1. General damages according to proof;
2. Special damages according to proof;
3. Statutory remedies;
4. Punitive and exemplary damages;
5. Attorney's fees and costs according to proof;
6. Injunctive and equitable relief as the Court deems proper;
7. Such other and further relief as the Court deems proper.

Count 3
Violation of FEHA (Government § 12900, et seq.) (Race Harassment)

1. General damages according to proof;
2. Special damages according to proof;
3. Statutory remedies;
4. Punitive and exemplary damages;
5. Attorney's fees and costs according to proof;

6. Injunctive and equitable relief as the Court deems proper;
7. Such other and further relief as the Court deems proper.

Count 4

**Violation of FEHA (Government Code § 12940(k)
(Failure to Prevent Discrimination, Harassment, and Retaliation)**

1. General damages according to proof;
2. Special damages according to proof;
3. Statutory remedies;
4. Punitive and exemplary damages;
5. Attorney's fees and costs according to proof;
6. Injunctive and equitable relief as the Court deems proper;
7. Such other and further relief as the Court deems proper.

Count 5

**Wrongful Constructive Termination of Employment in Violation of Public Policy
(Labor
Code § 1102.5; FEHA, Government Code § 12900, et seq.)**

1. General damages according to proof;
2. Special damages according to proof;
3. Statutory remedies;
4. Punitive and exemplary damages;
5. Attorney's fees and costs according to proof;
6. Injunctive and equitable relief as the Court deems proper;
7. Such other and further relief as the Court deems proper.

Count 7

Violations of Labor Code § 1102.5, et seq

1. General damages according to proof;
2. Special damages according to proof;
3. Statutory remedies;
4. Punitive and exemplary damages;
5. Attorney's fees and costs according to proof;
6. Injunctive and equitable relief as the Court deems proper;
7. Such other and further relief as the Court deems proper.

Count 8
CALIFORNIA EQUAL PAY ACT
California Labor Code § 1197.5, et seq

1. General damages according to proof;
2. Special damages according to proof;
3. Statutory remedies;
4. Punitive and exemplary damages;
5. Attorney's fees and costs according to proof;
6. Injunctive and equitable relief as the Court deems proper;
7. Such other and further relief as the Court deems proper.

Count 9
Intentional Infliction of Emotional Distress

1. General damages according to proof;
2. Special damages according to proof;
3. Punitive and exemplary damages;
4. Such other and further relief as the Court deems proper.

Count 10
Negligent Infliction of Emotional Distress

1. General damages according to proof;
2. Special damages according to proof;
3. Punitive and exemplary damages;
4. Such other and further relief as the Court deems proper.

Count 11
(Breach of Contract Against Gould Only)

1. General damages according to proof;
2. Special damages according to proof;
3. Such other and further relief as the Court deems proper.

Count 12
(Deliberate Inducement to Breach Contract)
(Against Defendant Lit K. Fung only)

1. General damages according to proof;
2. Special damages according to proof;
3. Punitive and exemplary damages;
4. Such other and further relief as the Court deems proper.

Dated: 10th day of August, 2021

/s/ DANIEL HOROWITZ
(SBN: 92400)
LAW OFFICE OF DANIEL HOROWITZ
Attorney for Plaintiff



CHARLES BOND (SBN: 60611)
PHYSICIANS' ADVOCATES
Attorney for Plaintiff